

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the UNITED STATES FISH AND WILDLIFE SERVICE, SAN PABLO BAY NATIONAL WILDLIFE REFUGE (USFWS) for an Order authorizing a change in existing use at Reclamation in Sonoma County from a private vehicle crossing to a public at grade pedestrian-bicycle-equestrian crossing of the Sonoma Marin Area Rail Transit District (SMART), milepost MP 5H 30.85, Brazos Junction Branch.

Application 15-07-016
(Filed July 8, 2015)

DECISION AUTHORIZING THE UNITED STATES FISH AND WILDLIFE SERVICE TO CONVERT AN EXISTING PRIVATE AT-GRADE HIGHWAY-RAIL CROSSING TO A PUBLIC PEDESTRIAN-RAIL CROSSING OVER THE SONOMA MARIN AREA RAIL TRANSIT TRACKS IN THE COUNTY OF SONOMA

Summary

This decision grants the United States Fish and Wildlife Service authorization to convert an existing private at-grade highway-rail crossing to a public bicycle/pedestrian crossing over the tracks of the Sonoma Marin Area Rail Transit District in unincorporated Sonoma County. The new crossing will be identified as Sears Point crossing, California Public Utilities Commission Crossing Number 005H-30.85-D and United States Department of Transportation Number 498704L. As part of the project, the United States Fish and Wildlife Service will close two nearby private crossings.

This proceeding is closed.

Discussion

The United States Fish and Wildlife Service (USFWS) proposes to convert the existing private crossing at milepost 30.85 to a new public at-grade pedestrian-bicycle-equestrian-rail Sears Point crossing (crossing) over one set of tracks of the Sonoma Marin Area Rail Transit District (SMART), in the County of Sonoma (County). The crossing will be a 12-foot wide asphalt pathway that crosses the tracks at an approximate 90-degree angle. Northwestern Pacific Railroad Company runs approximately two freight trains per week at a maximum speed of 25 mph and there will be no SMART passenger train usage over the crossing. The USFWS states that the crossing is vital to its ability to provide educational opportunities to the general public including students of all ages. The crossing will provide recreational opportunities to North Bay residents and others to exercise, observe nature, witness ecological restoration, and ultimately connect with the San Francisco Bay environment. The crossing will enable bicyclists and pedestrians to cross the track at a right angle providing maximum visibility.

As part of the project, the USFWS will close two nearby private crossings, California Public Utilities Commission (CPUC/Commission) Crossing Numbers 005H-31.24-X and 005H-31.54-X.

The USFWS will include the following features in the construction of the proposed crossing:

- 16-foot, 3-inch wide precast concrete crossing panel surface for the track;
- 12-foot wide pathway;

- Americans with Disabilities Act compliant detectable warning tactile strips on both approaches, located a minimum of 12 feet from the centerline of the track;
- 100 feet of fencing in all four quadrants of the crossing to deter trespassing along the railroad right-of-way;
- Two curb-mounted Commission Standard 8 (flashing light signal assembly) warning devices;
- Commission Standard 1-D “RAILROAD CROSSING AND BICYCLES ONLY” and California Manual on Uniform Traffic Control Devices (CA MUTCD) R8-10 “STOP HERE WHEN FLASHING” signs on each warning device; and
- A CA MUTCD W10-1 “RXR” railroad advance warning sign and pavement markings in each approach direction.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) applies to discretionary projects to be carried-out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹ or the agency with the greatest responsibility for supervising or approving the project as a whole.² Here, the USFWS is the lead agency under CEQA for this project because it prepared the environmental documents, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³ Also, as a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry-out, finance, or approve.⁴

In April 2012, the USFWS certified the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Sears Point Wetland and Watershed Restoration Project (SPWWRP). The crossing is a part of the larger SPWWRP.

On June 26, 2012, the USFWS filed a Notice of Determination (NOD) with the State of California Office of Planning and Research. The NOD states that the SPWWRP would not have a significant impact on the environment and that those findings were made pursuant to the provisions of CEQA.

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

⁴ CEQA Guideline Section 15096(g).

Impacts identified under CEQA relating to the construction and implementation of the at-grade pedestrian-rail crossing aspect of the project are within the scope of the Commission's jurisdiction. The Final EIR/EIS and NOD did not identify any significant impacts associated with the rail-crossing aspect of this project.

The Commission reviewed and considered the USFWS's Final EIR/EIS and NOD as these documents relate to the at-grade pedestrian rail crossing and finds these documents adequate for our decision-making purposes.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements including Rule 3.7 of the Rules of Practice and Procedure, which relates to the construction of a public road across a railroad.

The Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch has inspected the site of the proposed crossing, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject at-grade pedestrian-rail crossing be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3360, dated July 23, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Elizaveta I. Malashenko is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on July 15, 2015.
2. The USFWS requests authority, under Public Utilities Code Sections 1201-1205, to convert the existing private highway-rail crossing at milepost 30.85 to a new public at-grade pedestrian-bicycle-equestrian-rail crossing over the tracks of the SMART in Sonoma County. The new crossing will be identified as Sears Point crossing, CPUC Crossing No. 005H-30.85-D and United States Department of Transportation (DOT) No. 498704L.
3. CPUC Crossing No. 005H-31.24-X, DOT No. 498705T and CPUC Crossing No. 005H-31.54-X, DOT No. 498706A will be closed.
4. The USFWS is the lead agency for this project under CEQA.
5. In April 2012, the USFWS certified the Final EIR/EIS for the SPWWRP of which the Sears Point crossing is a part.
6. On June 26, 2012, the USFWS filed a NOD with the State of California Office of Planning and Research. The NOD states the SPWWRP would not have a significant impact on the environment and those findings were made pursuant to the provisions of CEQA.

7. Impacts related to the construction and implementation of the at-grade pedestrian-rail crossing aspect of the project are within the scope of the Commission's permitting process.

8. None of the environmental documents identified any significant impacts associated with the at-grade highway-rail crossing aspect of the project.

9. The proposed at-grade pedestrian-rail crossing will preserve the USFWS's goals for a safe, efficient transportation system as the SPWWRP area is developed.

Conclusions of Law

1. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Final EIR/EIS and NOD.

2. Safety, traffic/transportation, noise impacts, and other impacts related to the at-grade pedestrian-rail crossing are areas within the scope of the Commission's permitting process.

3. The Final EIR/EIS and NOD are adequate for our decision-making purposes.

4. The Final EIR/EIS and NOD were completed in compliance with CEQA.

5. The Final EIR/EIS and NOD reflect the Commission's independent judgment and analysis.

6. The EIR/EIS and NOD did not identify any significant impacts relating to the at-grade pedestrian-rail crossing aspect of the project.

7. The application is uncontested and a public hearing is not necessary.

8. The application should be granted as set forth in the following Order.

9. The proceeding should be closed.

O R D E R**IT IS ORDERED** that:

1. The United States Fish and Wildlife Service is authorized to convert an existing private at-grade highway-rail crossing to a public at-grade pedestrian-rail crossing over the tracks of the Sonoma Marin Area Rail Transit District at milepost 30.85 in unincorporated Sonoma County.
2. The new public Sears Point at-grade pedestrian-rail crossing shall have the crossing treatments and configuration described in this decision and specified in the United States Fish and Wildlife Service's application and its attachments and addendum. The new public Sears Point at-grade pedestrian-rail crossing shall be identified as California Public Utilities Commission Crossing Number 005H-30.85-D and United States Department of Transportation Number 498704L.
3. California Public Utilities Commission Crossing Number 005H-31.24-X, United States Department of Transportation Number 498705T and California Public Utilities Commission Crossing Number 005H-31.54-X, United States Department of Transportation Number 498706A shall be closed.
4. Sonoma Marin Area Rail Transit District shall ensure that Emergency Notification Systems Signs are installed to comply with Title 49, Code of Federal Regulation Section 234.309.
5. The United States Fish and Wildlife Service shall notify the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least five (5) business days prior to opening the at-grade highway-rail crossing. Notification must be made to rceb@cpuc.ca.gov.
6. Within 30 days after completion of the work under this order, the United States Fish and Wildlife Service shall notify the Rail Crossings and Engineering Branch in writing, by submitting a completed California Public Utilities

Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work, including the crossing closures. Form G requirements and forms can be obtained at the California Public Utilities Commission web site Form G page at <http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg>. This report may be submitted electronically to rceb@cpuc.ca.gov.

7. Within 30 days after completion of the work under this order, Sonoma Marin Area Rail Transit District shall notify the Federal Railroad Administration of the existence of the public at-grade pedestrian-rail crossing and crossing closures by submitting a United States Department of Transportation CROSSING INVENTORY FORM, form FRA F6180.71 for each crossing. Concurrently Sonoma Marin Area Rail Transit District shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to rceb@cpuc.ca.gov.

8. The United States Fish and Wildlife Service shall comply with all applicable rules, including California Public Utilities Commission General Orders, the United States Department of Transportation's Americans with Disabilities Act Standards for Transportation Facilities and the California Manual on Uniform Traffic Control Devices.

9. The United States Fish and Wildlife Service has three years to exercise the authority to construct the Sears Point pedestrian-rail crossing, unless time is extended if the above conditions specified in Ordering Paragraphs 2 through 8 are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so requires.

10. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

11. The application is granted as set forth above.

12. Application 15-07-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.